APPENDIX
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APPENDIX A

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-BG-1592

IN RE: WILLIAM A. BORDERS, JR.,

Petitioner.

April 16, 2003

Before **WAGNER**, Chief Judge; *[*]* **TERRY, STEADMAN, SCHWELB, FARRELL, RUIZ, REID, GLICKMAN,** and **WASHINGTON,** Associate Judges.

ORDER

PER CURIAM:

On consideration of petitioner's petition for rehearing en banc, the unopposed motion of the Reverend Walter E. Fauntroy to file the lodged amicus brief, the lodged amicus brief of the Reverend Walter E. Fauntroy, the motion for leave to file an amended petition for initial hearing en banc, filed by Congressman Elijah Cummings, Congressman James Clyburn, Congressman Earl Hilliard, Congressman Bennie Thompson, et al., construed as a motion to file an amici curiae brief, the motion for leave to file a brief in support of petitioner's petition for rehearing en banc, the lodged amici curiae brief, Bar Counsel's unopposed motion for leave to file an opposition

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[*] Associate Judges Terry and Glickman are recused from this case.

exceeding ten pages, and Bar Counsel's lodged opposition, and it appearing that a majority of the judges of this court in regular active service have not voted to grant the petition for rehearing en banc, it is

ORDERED that the unopposed motion of the Reverend Walter E. Fauntroy to file the lodged amicus brief is granted and the Clerk is directed to file the lodged amicus brief of the Reverend Walter E. Fauntroy. It is

FURTHER ORDERED the motion for leave to file an amended petition for initial hearing en banc filed by Congressman Elijah Cummings, Congressman James Clyburn, Congressman Earl Hilliard, Congressman Bennie Thompson, et al., construed as a motion for leave to file the lodged amici curiae brief in support of petitioner's petition for rehearing en banc is granted and the Clerk is directed to file the lodged amici curiae brief. It is

FURTHER ORDERED that Bar Counsel's unopposed motion for leave to file the lodged opposition exceeding ten pages is granted and the Clerk is directed to file Bar Counsel's lodged opposition. It is

FURTHER ORDERED that the petition for rehearing en banc is denied.

Chief Judge Wagner, Associate Judges Reid and Washington would grant the petition for rehearing en banc.

Statement of Associate Judge **REID**, with whom Chief Judge **WAGNER** and Associate Judge **WASHINGTON** concur:

I believe we should grant Mr. Borders' petition for rehearing en banc. I am not persuaded that *In re Abrams*, 689 A.2d 6 (D.C. 1997) (en banc), in which I joined three of my colleagues in dissent, stands as a bar to the full court's consideration of the panel decision denying Mr. Borders' recent petition for automatic reinstatement based on a Presidential pardon. Since we are confronted with a purely legal issue and a question

involving interpretation of our decision in *Abrams*, *supra*, as well as other interpretation issues, it makes little sense to me to compel Mr. Borders, who was disbarred in 1983, to file another formal petition for reinstatement before the Board on Professional Responsibility, only to have the matter return to us at a much later point in time for consideration of the same legal and interpretation issues on which a division of this court already has opined, and for which we now have a petition for rehearing en banc.

Simply put, I believe it is procedurally unfair for this court to put Mr. Borders through an unnecessary step. Disbarred since 1983, he has now been given a President pardon for the convictions that served as the basis for his disbarment,[1] and the decision whether to reinstate him "is ours alone." *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985). Customarily, we prefer to have the Board on Professional Responsibility's input before rendering a decision, but this is an unusual case and the Board, understandably, would benefit from our guidance, within the context of this case and controversy. Indeed, the Board's report on Mr. Borders' prior reinstatement petition specifically lifted up a key precedent from this court, *In re McBride*, 602 A.2d 626 (D.C. 1992) (en banc) in stating: "*McBride* raises extremely difficult judgments on which the Board will need guidance from the court."

Given the division of this court in *Abrams*, *supra*, and that decision's pivotal role in the panel's consideration of Mr. Borders' petition for automatic reinstatement, *In re Borders*, 797 A.2d 716 (D.C. 2002), it would not be surprising if the Board again noted its need for guidance not only regarding *Abrams* but also *McBride*, *supra*. The panel decision denying

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[1] "Petitioner was disbarred in 1983 on the basis of four 1982 federal convictions arising out of his role in a conspiracy to solicit a bribe from criminal defendants in exchange for lenient treatment by a United States District Court judge." *In re Borders*, 665 A.2d 1381, 1386 (D.C. 1995) (King, J., concurring).

automatic reinstatement focused on language from *McBride*, including the following statement: "[I]n passing, [the *McBride* court] pointed out that * * * the House Committee on the Judiciary 'explained that a pardon would not automatically reverse any disbarment; rather, the decision to reinstate after a pardon remained with the court.'" *In re Borders*, 797 A.2d at 717 (quoting *McBride*, *supra*, 602 A.2d at 639 n.23 (other citation omitted)). The panel's use of that passage and the panel's interpretation of D.C. Code § 11-2503(a), *Abrams*, and *McBride*, may or may not be persuasive to the full court. Consequently, in my view, it makes sense to consider these legal and interpretation issues now, given this court's weighty obligation, "alone," to determine whether Mr. Borders should be reinstated to the practice of law.

APPENDIX B

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-BG-1592

IN RE: WILLIAM A. BORDERS, JR.,

Petitioner.

May 2, 2002

Before **STEADMAN** and **FARRELL**, Associate Judges, and **KING**, Senior Judge.

FARRELL, Associate Judge:

Petitioner was disbarred from the practice of law in the District of Columbia following an unsuccessful appeal of his 1982 federal convictions for conspiracy, obstruction of justice, and unlawful travel in interstate commerce with intent to commit bribery. Under this court's decisions, these crimes each involved moral turpitude, *see In re Borders*, 665 A.2d 1381, 1382 (D.C. 1995), requiring his disbarment under D.C. Code § 11-2503(a) (2001).[1] On January 20, 2001, President William J.

[1] That section provides in full: When a member of the bar of the District of Columbia Court of Appeals is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member. Upon the granting of

Clinton granted petitioner a full and unconditional pardon. Petitioner now, rather than seek reinstatement via a petition filed with the Board on Professional Responsibility, see D.C. Bar R. XI, § 16(d) (2001), asks the court to reinstate him automatically by virtue of the pardon, contending that "this Court must use its authority under D.C. Code § 11-2503 and modify or vacate Mr. Borders's disbarment by reinstating him to the D.C. Bar." We deny the petition without prejudice to the filing of a proper petition for reinstatement before the Board, in which petitioner may urge the pardon as a consideration favoring reinstatement. We express no view at this time concerning the proper weight to be given the pardon in determining whether petitioner has proven his fitness for reinstatement.

D.C. Code § 11-2503(a) provides that, "[i]f a final judgment of conviction [of an offense involving moral turpitude] is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member." We have recognized repeatedly that, "in accordance with the plain language of section 11-2503(a)," disbarment is mandatory once the "final judgment" condition is met. *In re Hopmayer*, 625 A.2d 290, 292 (D.C. 1993); *see also, e.g.*, *In re McBride*, 602 A.2d 626, 629 (D.C. 1992) (en banc).[2] By contrast, the same section states that, "[u]pon the granting of a pardon to a member so convicted, the court may vacate or modify the order

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a pardon to a member so convicted, the court may vacate or modify the order of disbarment.

[2] In *McBride*, on the other hand, we recognized that the statutory language (specifically the word "thereafter") was ambiguous with respect to the length of disbarment, 602 A.2d at 637-38, and applying by analogy the rule of lenity in criminal cases, we interpreted that ambiguity to mean that an attorney disbarred under the statute, "like all others who have been disbarred, [is] entitled to petition for reinstatement * * * after five years of disbarment." *Id.* at 641.

of disbarment" (emphasis added). The legislature's use of the permissive "may," on its face, would seem to defeat petitioner's argument that the court has no discretion but to reinstate an attorney disbarred under the statute but subsequently pardoned. In *McBride* this court described the legislative history of § 11-2503, including a comprehensive amendment of the statute in 1920 that gave the court "power," upon the granting of a pardon, "to vacate or modify [a prior] order of disbarment or suspension." 602 A.2d at 638. The court, in passing, pointed out that in proposing adoption of that amendment the House Committee on the Judiciary "explained that a pardon would not automatically reverse any disbarment; rather, the decision to reinstate after a pardon remained with the court." *Id.* at 639 n.23 (citing *To Amend the Code of the District of Columbia: Hearings on H.R. 14974 Before the House Comm. on the Judiciary*, 64th Cong., 1st Sess. 63 (1916)).

Despite this authority plainly indicating that a pardon does not have the automatic effect petitioner would give it, he argues that in *In re Abrams*, 689 A.2d 6 (D.C. 1997) (en banc), the court implicitly recognized that when disbarment rests solely upon proof of conviction, as it does under § 11-2503(a), a subsequently granted pardon strips the disbarment of its continued legitimacy. *Abrams* does not stand for that conclusion; indeed, the *Abrams* court was not asked to decide the effect of a pardon upon a disbarment based on § 11-2503(a). Abrams had pled guilty to two counts of willful failure to answer questions pertinent to a Congressional inquiry, a crime Bar Counsel did not contend involved moral turpitude. *See id.* at 11. After Abrams was pardoned by the President, the Board on Professional Responsibility recommended his suspension for one year on the ground that the underlying conduct involved dishonesty, deceit, or misrepresentation in violation of a disciplinary rule. *Id.* at 6. In accepting that finding of misconduct (but imposing the lesser sanction of public censure), the court rejected the argument that the "court's

authority to impose professional discipline was * * * nullified by the presidential pardon." *Id.* at 7.[3]

Petitioner is correct that, although rejecting Abrams' claim regarding the effect of a pardon, the court opined that "[t]he presidential pardon would undoubtedly have precluded a sanction based on Abrams' conviction, and Abrams did not, in any event, commit such a crime [*i.e.*, one involving moral turpitude]." *Id.* at 11 (emphasis added). But as the discipline imposed in *Abrams* did not stem from the application of § 11-2503(a), the court did not have to come to grips with the Congressional judgment expressed in that statute that "'the decision to reinstate after a pardon remain[s] with the court,'" as a matter of discretion. *McBride*, 602 A.2d at 639 n.23 (quoting Congressional report). Moreover, the quoted language from *Abrams* was stated in the context of a pardon that had been issued before attorney discipline was imposed, *see Abrams*, 689 A.2d at 9, a situation different from the present case and one that § 11-2503(a) by its terms appears not to address. Consequently, the statements in *Abrams* on which petitioner relies provide no basis for disregarding the plain language of the statute.

Based upon that language, we reject petitioner's argument that the pardon requires his automatic reinstatement without

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[3] The court reasoned in part:

> "No moral character qualification for Bar membership is more important than truthfulness and candor." *In re Meyerson,* 190 Md. 671, 59 A.2d 489, 496 (1948). An attorney is required to be a person of good moral character not only at the time of admission to the Bar, but also thereafter. *In re Rouss*, 221 N.Y. 81, 116 N.E. 782, 783 (1917) (Cardozo, C.J.). The pardon could not "reinvest [Abrams] with those qualities which are absolutely essential for an attorney at law to possess or rehabilitate him in the trust and confidence of the court." *In re Lavine*, 2 Cal. 2d 324, 41 P.2d 161, 163 (1935) (citation omitted).

689 A.2d at 7.

regard to whether he has established fitness to resume practice in accordance with D.C. Bar Rule XI, § 16(d) and the factors set forth in *In re Roundtree*, 503 A.2d 1215 (D.C. 1985). *See In re Lavine*, 2 Cal. 2d 324, 41 P.2d 161, *modified*, 2 Cal. 2d 324, 42 P.2d 311 (1935). Petitioner must file the appropriate application for reinstatement with the Board, and in that proceeding he "may urge the pardon as a consideration for reinstatement." *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 126 (7th Cir. 1977).

Petition denied.

STEADMAN, Associate Judge, concurring:

I continue to adhere to the view of the dissent in *In re Abrams* as to the continued force of Supreme Court precedent, which only that Court can overturn, on the effect of a presidential pardon. However, bound as I now am by the contrary view of the majority in *Abrams*, I concur in the exposition of the court's opinion as to the appropriate next step in this reinstatement proceeding.

APPENDIX C

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

No. M-122-82

IN THE MATTER OF WILLIAM A. BORDERS, JR.,

A Member of the Bar of the District of Columbia Court of Appeals.

August 31, 1983

Before **NEBEKER** and **BELSON**, Associate Judges, and **REILLY**, Associate Judge, Retired.

ORDER

PER CURIAM:

On consideration of the certificate filed herein consisting of the record in Criminal No. 81-596-CR-ETC, *United States v. Borders and Hastings*, indicating that respondent, William A. Borders, Jr., was convicted in the United States District Court for the Southern District of Florida of conspiracy, obstruction of justice, aiding and abetting, and violation of the Travel Act, 18 U.S.C. §§ 371, 1503, 2, and 1952, and of the report and recommendation of the Board on Professional Responsibility, which is annexed hereto and incorporated herewith, and it appearing therefrom that at least two of the crimes of which the respondent has been convicted involved moral turpitude, and that these convictions have been affirmed on appeal, 693 F.2d 1318 (11th Cir.), *cert. denied*, 103 S. Ct. 1875 (1983), it is

ORDERED that the respondent, **WILLIAM A. BORDERS, JR.,** is disbarred from the practice of law in the District of Columbia pursuant to D.C. Code § 11-2503(a) (1981), effective September 30, 1983.

The Clerk shall cause to be transmitted to the respondent a copy of this order thereby causing him to have notice of disbarment; and a copy of Section 19 of Rule XI of the Rules Governing the Bar of the District of Columbia.